

# EMPLOYEE PLANS DETERMINATIONS QUALITY ASSURANCE BULLETIN

FY-2005 No. 1

Date: October 13, 2004

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## PROPER USE OF CAVEATS AND CLOSING TRANSMITTAL FORM

### **I. Background**

The TEQMS case administration standards require determination letters to contain accurate and complete information. This bulletin is being issued to provide guidance on the proper use of caveats. IRM 7.11.1.2.2 (09-01-2002) Employee Plans Determination Letter Program Handbook provides the guidelines for the case processing and closing procedures for determination letter applications.

This bulletin includes the links to locate the IRM Exhibit 7.13.5 (04-01-2003), which provides a complete listing of the letters and caveats listed on the EDS System. The Frequently Asked Questions is also included as an attachment to address the proper use of caveats for specific situations. The changes from the QAB 2003-1 that was originally issued December 19, 2002 are underlined for convenience.

The determination letter provides a historical record that can be useful for future determination requests or for plan examination. If the employer or representative has lost the prior determination letter, the EP/EO Determination System (EDS) can be used to generate a copy of the prior determination letter. Therefore, any addendum to the determination letter should consist of only the 7000 or 9000 series caveats. The determination specialist should never attach a document or other information that has not been input on EDS. For example, a 9000 series caveat that reads, "See attached document", is not acceptable.

The completed case file frequently contains a number of executed and proposed amendments which must be included on the determination letter. It is critical to the integrity of the determination letter program to accurately include the date of each amendment submitted by the applicant, whether proposed or adopted.

### **II. Other caveat Issues:**

The 835 letter is used to approve applications filed for the initial adoption or amendments to plans submitted on Forms 5300, 5307, or 6406. The 1132 letter is used to approve applications submitted upon plan termination, generally, Form 5310. Frequently, there is a separate trust document. All amendments to the plan and trust adopted after the date of the last determination letter should be included on the current letter, including amendments to the trust document. Amendments that were adopted before the last determination letter should not be included.

Publication 794 states the determination letter applies only to the employer on whose behalf the application is made. Therefore, for controlled groups or affiliated service group of employers adopting the same plan, the letter will be issued only to the employer who initiated the application.

If the Form 5300 is filed for a group trust, letter 1520 should be prepared on EDS. This letter has four automatic paragraphs. There are no selective caveats for the 1520 letter.

### **III. Correction to a Previously Issued Letter:**

At times it is necessary to issue a corrected determination letter. Generally, our Customer Accounts Services unit, (CAS) in Cincinnati completes these corrections. CAS secures the original case file, verifies the proper caveat, and mails the corrected determination letter. Caveat 7054 should be included on the corrected letter. The caveat reads: “This letter supersedes our letter dated \_\_\_\_.” This caveat is the same for the 835 and 1132 letters. The Exhibit C, attached to this bulletin, should be completed and forwarded with a copy of the corrected letter to the Federal Records Center to be associated with the case if the corrected letter is generated after the case file has been closed.

### **IV. 401(a)(9) Final Regulations**

Revenue Procedure 2002-29 provides guidance concerning amendments to qualified defined contribution plans related to IRC Section 401(a)(9). In general, defined contribution plans must be amended by the last day of the first plan year beginning on or after January 1, 2003. The Revenue Procedure provides that determination letter applications for individually designed defined contribution plans filed on or after the first day of the first plan year beginning on or after January 1, 2003 will be reviewed with respect to whether the form of the plan satisfies the requirements of the section 401(a)(9) Final and Temporary Regulations. Specialists should ensure these individually designed plans have been amended for the section 401(a)(9) Final and Temporary Regulations and use caveat 6, 7, 26 or 27, as appropriate.

If a defined contribution plan is timely amended to comply with the section 401(a)(9) Final and Temporary Regulations and, as a result of the amendment, there is a disqualifying provision under section 401(a)(9), the remedial amendment period with respect to the disqualifying provision will end with the EGTRRA remedial amendment period.

Determination letters issued for pre-approved plans may be relied on with respect to the requirements of the section 401(a)(9) Final and Temporary Regulations only if those requirements were considered in issuing the opinion or advisory letter. Revenue Procedure 2002-29 provides model plan amendments to comply with section 401(a)(9) Final and Temporary Regulations. If a pre-approved plan is submitted with an amendment for section 401(a)(9) the determination letter should not include caveats 6, 7, 26, or 27 for the amendment. The determination letter will not give reliance for section 401(a)(9) for these plans. If the pre-approved plan is submitted without an amendment for section 401(a)(9) Final and Temporary Regulations, it is not necessary to request one.

Effective October 13, 2004, Caveat #7062 should be used for pre-approved plans to acknowledge receipt of the amendment. Caveat 7062 reads as follows:

This determination letter acknowledges receipt of the provisions intended to satisfy the requirements of the Final and Temporary regulations under Section 401(a)(9) that were published in the Federal Register on April 17, 2002, 74 FR 18987.

For defined contribution plans terminating on or after the first day of the first plan year beginning on or after January 1, 2003, specialist should verify the plan has been amended for 401(a)(9) Final and Temporary Regulations.

## **V. EGTRRA**

Notice 2001-42 provides guidance concerning amendments to qualified plans related to EGTRRA. The Notice provides that (a) individually designed plans submitted for GUST may reflect the changes made by EGTRRA and (b) pre-approved GUST plans may include EGTRRA amendments in the form of a separate, clearly identified addendum to the plan. Caveat #99 was added to all letters after January 1, 2002.

This is an automatic caveat and states; "This letter may not be relied on with respect to whether the plan satisfies the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16."

Notice 2001-42, provides that the availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. The good faith EGTRRA plan amendments must be adopted no later than the later of (i) the end of the GUST remedial amendment period or (ii) the end of the plan year in which the EGTRRA change in the qualification requirements is required to be, or is optionally, put into effect under the plan.

All cases should be reviewed to verify whether they contain EGTRRA amendments. If the Form 5300 or 5307 application includes separate clearly identified proposed or executed EGTRRA amendments, caveats 6, 7, 26, or 27 should not be used to indicate the determination letter applies to the EGTRRA amendments. Caveat #7061 should be used to acknowledge receipt of the EGTRRA amendments. If the EGTRRA amendments are included within an individually designed plan document, the caveat 7061 should be used in addition to the appropriate caveat 6, 7, 26, 27 with the amendment date.

We are now receiving applications for the adoption of newly adopted plans that are effective January 1, 2002, and later, which include provisions to comply with EGTRRA. The terminology used in caveat 7061 acknowledged receipt of "the amendments" intended to satisfy the requirements of section 401(a) of the Code, as amended by EGTRRA, which is not appropriate for newly adopted plans.

Effective August 21, 2003, caveat 7061 was modified to read as follows:

“This determination letter acknowledges receipt of the provisions intended to satisfy the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16.”

For plans terminating after their EGTRRA effective dates, (for calendar year plans December 31, 2001), the agent should verify the plan has been properly amended for the provisions of EGTRRA that have become effective. Caveats 10 or 11 should be added to the determination letter to indicate reliance on these amendments. Effective October 13, 2004, Law indicator M should be used to indicate EGTRRA.

**VI. IRM Exhibit 7.13.5** (04-01-2003) provides a complete list of the letters, procedures for the EDS Letter Generation system and a copy of the letter and caveats.

### **VII. Standard Caveats for the 835 Letters**

The following caveats are used to indicate reliance on the plan adoption and/or amendments:

	<b>MOST COMMONLY USED CAVEATS</b>	<b>FORMS 5300, 5307 and 6406</b>
<b>Caveat Number</b>	<b>When to use</b>	<b>Notes</b>
6	To condition the determination letter for the receipt of proposed amendments to the plan.	The date of the letter used to submit the proposed amendment should be used. If an undated facsimile is used to transmit the proposed amendment, the received date on the fax should be used for the caveat 6. These dates may be in numeric format, (i.e. 02/25/02 or 02-25-02). The numeric format will allow 2 separate dates to be entered in both caveats 6 and 7.
7	Additional caveat for proposed amendments when needed.	See notes for caveat #6.
12	Use for Form 6406 only. Limits scope of reliance to amendments only. May use in conjunction with caveats #6/#7 or #26/27.	Form 6406 determination letters will generally not contain a law compliance caveat.
26	To indicate the consideration of executed amendments for the plan.	Caveat 26 is used to indicate the execution date of each amendment after the initial adoption that has <b>NOT</b> been included on a prior determination letter. Each amendment included with the application or secured by the agent should be included on the determination letter. Caveat 27 is used if additional space is needed for executed amendments.
27	Additional caveat for executed amendments.	See notes for caveat #26.
28	Used only for the initial adoption of the plan.	Caveat 28 is used to indicate the date the employer executed the <u>initial</u> adoption of a plan.
91	Used for <u>amendments</u> to DB plans; expresses no opinion on the conversion from a traditional defined benefit formula to a cash balance formula	Caveat should not be used on the initial adoption of a defined benefit plan.

97	Used to show compliance with full GUST.	Generally all plans must comply with full GUST. Caveats 92 & 96 are no longer appropriate. Caveat 97 is the full GUST compliance caveat.
5998	Used to indicate a copy of the letter is being provided to the authorized Power of Attorney(s).	Copy of letters should be provided to 2 <sup>nd</sup> POA if so authorized per item #7(b) of Form 2848.
7000	Used to condition determination letter for receipt of proposed restated plan.	Use date of cover letter unless the proposed restatement sent via separate correspondence.
7027	Used in addition to caveat #27 to indicate consideration of executed amendments. Can be used if 5 or 6 amendments are received.	Used in conjunction with caveats #26 and #27 in which if the numeric format is utilized 2 additional amendments may be added. A 9000 series caveat may be used if more space is needed. The 9000 series paragraph should be worded: "This determination also applies to the amendments adopted on____." (Note: the amendment dates should be listed in chronological order).

<b>FORMS 5300, 5307 and 6406 Continued</b>		
<b>Caveat #</b>	<b>SPECIAL SITUATION CAVEATS</b>	<b>Notes</b>
16	Used for plans that contain section 403(b) pro	This caveat indicates that the letter is a determination only with respect to the 401(a) plan and not with respect to the 403(b) plan.
21	Used to indicate plan meets the Affiliated Service Group Status (ASG) requirements. Used only when specific ASG ruling requested.	The sponsor must apply on Form 5300 and specifically request the ruling. The information outlined in section 14 Rev. Proc 2004-6 (Revised Annually) should be provided.
23	Used to indicate plan does not meet the Affiliated Service Group Status requirements. Used only when specific ASG ruling requested.	See notes for caveat #21 above.
22	Used to indicate plan meets the Leased Employee Status of section 414(n). Used only when specific Leased Employee ruling requested.	See notes for caveat #21 above.
24	Used to indicate plan does not meet the Leased Employee Status of section 414(n). Used only when specific Leased Employee ruling requested.	See notes for caveat #21 above.
39	Used for plans involved in termination spin-offs or re-establishments conditioning the letter on receiving approval of changes in funding amortization.	See IRS DOL Implementation Guidelines dated May 24, 1984.
51	Used for Employee Stock Ownership Plans, (ESOP) that meets the requirements of section 4975(e) (7) and has submitted Form 5309 with a 'yes' in item 8(a).	The sponsor must apply on Form 5300 and attach Form 5309. Form 5309 must request a 4975(e) (7) ruling. May apply even if no leverage loan used in plan.
85	Used for plans that meets the requirements of sections 401(h)/420.	The sponsor must apply on Form 5300 and specifically request the ruling. The information outlined in section 16 of Rev Proc 2004-6 (Revised Annually) should be provided. In addition, the sponsor may provide the appendix from Rev. Proc. 2004-6.
98	Used for multiple employer plans that meet section 413(c).	Only applicants that submit a Form 5300 will receive a determination letter. See section 10 of Rev Proc 2004-6 (Revised Annually) and QAB 2002-1 dated 10/30/2001 for further details.
7056	Used for plan in which at the sponsor's request the Service determines a partial termination has occurred.	The sponsor must apply on Form 5300 and provide the information required in the instructions to Form 5300.
7058	Used for plan in which at the sponsor's request the Service determines a partial termination has not occurred.	Same as above

	<b>FORMS 5300, 5307 and 6406 Continued</b>	
<b>Caveat #</b>	<b>SPECIAL SITUATION CAVEATS</b>	<b>Notes</b>
7061	Used to acknowledge receipt of the provisions intended to satisfy EGTRRA.	This caveat is used to acknowledge that the “good-faith” amendments for EGTRRA were received by the Service. Currently all 835 letter contain automatic paragraph #99 which indicates that the Service has not considered whether or not the amendments for EGTRRA satisfy the requirements of section 401(a). It is no longer appropriate to use caveats #26 or #27 for separate executed EGTRRA amendments or a 9000 series paragraph for proposed EGTRRA amendments.
7062	Used to acknowledge receipt of the 401(a)(9) Final regulations for pre-approved defined contribution plans.	This caveat is effective October 13, 2004

### **VIII. Standard Caveats for the 1132 Letters**

Form 5310 is submitted for a request for determination letter upon termination of the plan. The following explain the proper use of caveats for the 1132 letter:

	<b>MOST COMMONLY USED CAVEATS</b>	<b>FORM 5310</b>
<b>Caveat Number</b>	<b>When to use</b>	<b>Notes</b>
4	Used to indicate the proposed date of plan termination.	This is a <u>required</u> caveat for plan terminations.
5	Additional caveat for proposed amendments when needed.	See notes for caveat # 10.
10	To condition the determination letter for the receipt of proposed amendments to the plan.	The date of the letter used to submit the proposed amendment should be used. If an undated facsimile is used to transmit the proposed amendment, the received date on the fax should be used for the caveat 10. These dates may be in numeric format, (i.e. 02/25/02). The numeric format will allow 2 separate dates to be entered in both caveats 10 and 5.
11	To indicate the consideration of executed amendments for the plan.	Caveat 11 is used for each executed amendment after the initial adoption that has not been previously included on a prior determination letter. Each amendment included with the application or secured by the agent should be included on the determination letter.
7002	Used to condition determination letter for receipt of proposed restated plan.	Use date of cover letter unless the proposed restatement sent via separate correspondence.
7027	Used in addition to caveat #11 to indicate consideration of executed amendments. Can be used if 3 or 4 amendments are received.	Used in conjunction with caveat #11 in which 2 additional amendments can be added if the numeric format is utilized. A 9000 series caveat may be used if more space is needed. The 9000 series paragraph should be worded: "This determination also applies to the amendments adopted on ____." (Note: the amendment dates should be listed in chronological order).
52	Used for <u>terminations</u> of defined benefit plans; expresses no opinion on the conversion from a traditional defined benefit formula to a cash balance formula.	Caveat should be used on all defined benefit plan terminations.



**Caveats for Special Situations:**

<b>FORM 5310</b>		
<b>Caveat #</b>	<b>SPECIAL SITUATION CAVEATS</b>	<b>Notes</b>
7	Used for plans involved in termination spin-offs or re-establishments conditioning the letter on receiving approval of changes in funding amortization.	See IRS DOL Implementation Guidelines dated May 24, 1984.
44	Used for terminating ESOP plans that met the requirements of section 4975(e) (7).	Should verify plan met 4975(e) prior to termination.
6, 9, 8503	These caveats are used in conjunction with a plan that has terminated with assets reverting to the employer.	These caveats alert the sponsor of certain filing requirements and generate the Benefit Assurance Form that is used with reversion referrals. Usually all of these caveats are used, but may not apply to certain tax-exempt entities or governmental plans.
7060	Used to condition the letter for the full vesting of affected participants.	Generally used on terminations when a sponsor agrees to fully vest affected participants under section 411(d) (3). The date of the representative's or sponsor's letter providing for the full vesting is required.

**IX. Scope of Reliance on the Determination Letter**

1. All current determination letters are required to consider the qualification requirements of GUST; therefore caveat 97 should be used. Caveat 97 indicates: This letter considers the changes in qualification requirements made by the GATT, SBJPA, USERRA, TRA'97, RRA'98 and CRA'00.
2. If the application is for a governmental plan or any other plan that is requesting a determination letter for TRA'86 and GUST, both caveats 87 and 97 should be used.
3. Since all terminated plans have to be updated for the current law as of the date of termination, there is no caveat for the laws considered for the 1132 letter.
4. Announcement 2001-77 became effective on July 23, 2001 to simplify the application procedures for determination letters. Section I (F) of Announcement 2001-77 eliminated the caveats to indicate reliance on the Schedule Q and the demonstrations. Publication 794 is attached to each determination letter and has been revised to reflect the limitations on the scope of reliance on the determination letter. The applicant is required to retain copies of the application forms, demonstrations, and all correspondence with the Internal Revenue Service related to the application for reliance on a favorable determination letter.
5. An e-mail memorandum was issued on 7/20/01 from the Manager, EP Determinations Quality Assurance, to provide guidance on Announcement 2001-77. Caveats 94 and 95 were added to the 835 letter, and caveats 54 and 55 were added to the 1132 letter to indicate reliance on the additional information submitted which changed the scope of reliance on the determination letter. These additional caveats have created confusion among both agents and taxpayers and increased the errors in the

determination letters. Effective December 19, 2002, we discontinued use of caveats 94 and 95 on the 835 letter and caveats 54 and 55 on the 1132 letter.

### **X Closing Actions on EDS**

If the case has been reviewed and closed using the Accelerated Processing Procedures and no contact has been made with the taxpayer or representative, closing code 06 should be used. If the case has been reviewed and closed using the Accelerated Processing Procedures after contact with the taxpayer or representative for additional information, closing code 09 should be used. Select 19 instead of 01 on the EDS inventory control system menu screen in order to update the master record to status 09. For managerial approval of the status 09 closing code, select 29 instead of 08 on the EDS inventory control system.

If the case is assigned for issue only, the closing code "00" should be used. If the case is assigned for complete analysis, closing code "01" should be used.

All determination letters are required to consider the qualification requirements of GUST; therefore the law indicator "k" should be used. If the application is for a governmental plan or any other plan that is requesting a determination letter for TRA86 and GUST, the law indicator is also "k". Since all terminated plans have to be updated for the current law, the law indicator on all Form 5310 applications should be "m".

The attached Exhibits A and B are closing documents that may be used to assist agents, managers and clerical personnel preparing accurate determination letters. The caveats included on the determination letter should be limited to those included on (EDS) and the 7000 or 9000 series caveats addressed in this bulletin. If there are situations that have not been addressed in this bulletin or EDS, we recommend the agent consult with the group manager or contact the EP Determination Quality Assurance Staff prior to adding a 9000 series caveat.

Exhibits A and B, closing transmittal documents, are attached to this Bulletin. Exhibit A is for the 835 letter and Exhibit B is for the 1132 letter. The revised closing transmittal documents and guidance contained in this bulletin should be applied to all cases closed effective with the issuance of this bulletin.

If you have any questions, contact EP Senior Reviewer Ramona Brooks at 404-338-8181.

**EXHIBIT A**  
**EP DETERMINATION LETTER AND CLOSING TRANSMITTAL WORKSHEET**

Name of Case \_\_\_\_\_ DLN: 17007 \_\_\_\_\_  
 Specialist Name & EDS Number: \_\_\_\_\_ Case Number: \_\_\_\_\_

Circle applicable paragraphs & enter date

**Letter 835 Standard EDS Paragraphs:**

6 – Proposed amendments: Date of letter/fax \_\_\_\_\_

7 – 2<sup>nd</sup> Proposed Amendments: \_\_\_\_\_

28-- Date of adoption of initial plan \_\_\_\_\_

26 – Date of adoption of amendments \_\_\_\_\_

27---Additional amendments \_\_\_\_\_

7027 –Additional amendments \_\_\_\_\_

7000 – Proposed Restated Plan dated: \_\_\_\_\_

**9000 series paragraphs begin with 9001**

This determination also applies to the amendments adopted \_\_\_\_\_

12 – F-6406 Amendments Only

91 – Required for all DB plans

5998 –POA and Letter to POA #1 \_\_\_\_\_ POA #2 \_\_\_\_\_

**Special Situation Caveats**

21—Affiliated Service Group request

23---Does not meet Affiliated Service Group

22---Meets 414(n) status -

24—Does not meet 414(n)

16---403(b) Annuity provisions

39 – Spin-off Termination/Change in Funding

51 – ESOP plans

85---401(h) retiree medical benefits

98---Multiple employer application

7054- Correction to determination letter is solicited

Date of prior determination letter: \_\_\_\_\_

7058: Partial termination ruling was requested, no partial termination occurred.

7060: Restoration of vesting for affected participants agreed for partial termination:

Date of letter agreeing to restore vesting: \_\_\_\_\_ ”

**7061 Acknowledge good faith EGTRRA provisions**

“This determination letter acknowledges receipt of the provisions intended to satisfy the requirements of section 401(a) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16.”

**7062 Acknowledge receipt of the 401(a)(9) Final & Temporary Regulations for pre-approved defined contribution plans.**

**Caveat**  
**Number**

**LAW**  
**INDICATOR**

87 & 97

**K**

(Reliance for TRA’86 & GUST). Governmental Plans & any other plan that requests reliance on both laws

97

**K**

(Reliance for GATT, USERRA, SBJPA, TRA ’97, RRA 98, and CRA 2000)-

**CLOSING INFORMATION:**

Letter 835

Plan Effective Date: \_\_\_\_\_ Vesting Code: \_\_\_\_\_ Law Indicator: \_\_\_\_\_ Closing Date: \_\_\_\_\_

Closing Code: \_\_\_\_\_ Hours: \_\_\_\_\_ Grade: \_\_\_\_\_

NOTE: Closing Codes: 06- Screened out no contact; 09- Screened Out with contact; 00 – Limited review issue only; 01—Complete Analysis to update the master record to status 09, on the inventory control system menu screen, choose 19 instead of 01. Vesting Codes: A=Full & Immediate, B=Full after 2 years, C=3 Yr. Cliff, D=5 Yr. Cliff, E=6 Yr Graded, F=7 Yr. Graded, G=Other Changes to Entity Information: (If changes are necessary, indicate changes below, copy this form and forward to EP Unpostable Clerk, Room 4024). To approve a case after it has been put in status 09; on the inventory control system choose 29 instead of 08 for managerial approval.

**EXHIBIT B**  
**EP DETERMINATION LETTER AND CLOSING TRANSMITTAL WORKSHEET**

Name of Case \_\_\_\_\_ DLN: 17007 \_\_\_\_\_  
 Specialist Name & EDS Number: \_\_\_\_\_ Case Number: \_\_\_\_\_

Circle applicable paragraphs & enter date

**Letter 1132 Standard EDS Paragraphs:**

**Special Situation Caveats**

4 – Effective Date of Termination per resolution \_\_\_\_\_

6/9 – Reversion Paragraph (select both & must also select 8503)

10 – Proposed Amendments: Date of letter/fax \_\_\_\_\_

8503 – Benefit Assurance Form

5 – 2<sup>nd</sup> Proposed Amendments: \_\_\_\_\_

7-----Spin-off termination/change in funding

11---All executed amendments that have not been ruled on

7027 – Additional executed amendments: \_\_\_\_\_

44 – ESOP plans

7060 – Restoration of vesting for affected participants agreed for partial termination:

7002 – Proposed Restated Plan dated: \_\_\_\_\_

Date of letter agreeing to restore vesting: \_\_\_\_\_

**9000 series paragraphs\* should begin with 9001**

This determination also applies to the amendments adopted \_\_\_\_\_

52 – All terminations of DB plans

Correction to determination letter is solicited

5998 – POA and Letter to POA #1 \_\_\_\_\_ POA #2 \_\_\_\_\_

7054—Date of prior determination letter: Date \_\_\_\_\_

Since all terminations have to be updated for current law there is no caveat number for the law considered for Letter 1132, the law indicator would be M.

**CLOSING INFORMATION:**

Letter 1132

Closing Date: \_\_\_\_\_ Closing Code: \_\_\_\_\_ Law Indicator: \_\_\_\_\_ Hours: \_\_\_\_\_ Grade: \_\_\_\_\_

Closing Codes: 06- Screened out no contact; 09- Screened Out with contact /00-Limited review issue only; 01—Complete Analysis To update the master record to status 09, on the inventory control system menu screen, choose 19 instead of 01. Changes to Entity Information: (If changes are necessary, indicate changes below, copy this form and forward to EP Unpostable Clerk, Room 4024). To approve a case after it has been put in status 09; on the inventory control system choose 29 instead of 08 for managerial approval.

**EXHIBIT C**  
**Internal Revenue Service**  
(Forward this form and corrected Determination letter)  
**IRS-TE/GE Division)**  
**Attn: Georgia Clerkin, Room 4010**  
**550 Main St.**  
**Cincinnati, OH 45201**

\_\_\_\_\_ RETRIEVE EP CASE FROM THE FEDERAL RECORDS CENTER

Name: \_\_\_\_\_

EIN: \_\_\_\_\_

Box Number: \_\_\_\_\_

Sequence Number: \_\_\_\_\_

Plan Name: \_\_\_\_\_

X ASSOCIATE THE ATTACHED INFORMATION WITH EP CASE FILE

Name: \_\_\_\_\_

EIN: \_\_\_\_\_

Box Number: \_\_\_\_\_

Sequence Number: \_\_\_\_\_

INSTRUCTIONS: The box and sequence number can be found on the EDS computer Screen. After accessing EDS, take the following steps:

- 1.) Select 4 – Other EP\EO Applications from EDS Main Menu;
- 2.) Select 4 – Federal Records Center Menu;
- 3.) Select 1 – Query Cincinnati Database;
- 4.) Hit enter to query the Database;
- 5.) Enter the case number, name or EIN;
- 6.) Press “escape key” to retrieve the needed information.
- 7.) If an entry appears for the box number and the sequence number, print the screen;
- 8.) To exit the federal records database, press the “E” key; then select “x” key twice.  
This will return you to the EDS main menu.

REQUEST FROM: Name: \_\_\_\_\_

Group: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Approval:

\_\_\_\_\_  
Manager

\_\_\_\_\_  
Date

### **Frequently Asked Questions Regarding Caveats**

1. *The first paragraph of the QAB seems to suggest that caveats should be included regarding separate trust documents. Why are we now including a caveat on the FDL for the separate trust?*

If an amendment to the trust is submitted, we are required to review it, and secure amendments, if the trust contains any disqualifying provisions. The instructions to the 5300 series applications require the submission of the plan and trust and all amendments since the last determination letter. While the qualification of a trust is based on State law, and varies among the states across the Nation, the trust is an integral part of a qualified plan. The caveat 26 and or caveat 27 may be used to include the trust amendments.

2. *Is it proper to use a 9001 series caveat to state “This determination letter applies to the amendments to the trust dated ...” to distinguish the trust amendments from the plan amendments?*

The 9001 series caveat should not be used except for very unusual circumstances. The caveat 26 and 27 state “This letter is applicable for the amendments executed ...” This caveat should be used for amendments to either the plan or trust.

3. *The trust document contains language relating to fiduciary responsibilities and the handling of trust assets. If a fiduciary issue should ever come up in court, is there a danger that the court would rule that we had approved the language and therefore, the plan sponsor has reliance on our determination letter.*

The caveats 26 & 27 simply state “This letter is applicable for the amendments executed ...” The caveat provides that the amendment was reviewed and that it did not contain provisions that jeopardize the qualification of the plan. The reliance on the determination letter is subject to the limitations explained in Revenue Procedure 2004-6 and Pub 794. The fact that we issued a letter indicates that the plan meets the qualification requirements of section 401(a) of the Code and the related trust meets the requirements for tax exemption under section 501(a).

4. *What amendments should be included on the determination letter?*

Any amendment adopted after the date of the last determination letter, should be included on the current letter. Amendments that were adopted before the last determination letter should not be included. If a prior determination letter was issued in error, and failed to include all amendments submitted with the application, the applicant may contact customer account services to request a corrected letter. The customer account agents can secure the last application file and determine whether this amendment should be included on the corrected letter.

5. *The board of director’s or corporate resolution is often submitted in addition to the actual executed initial adoption or amendment. Should the board of director’s or corporate resolutions be included on the determination letter?*

In general, the resolutions should not be included on the favorable determination letter. If the initial adoption or amendment, is executed using the board of director's resolution or corporate resolution, the execution date should be used for caveat 26, 27, or 28. The termination of a plan is frequently made via board resolution, this is not considered an amendment and the effective date of the termination should be indicated on caveat 4.

*6. If a working copy is submitted, should this be included on the determination letter as a proposed amendment with caveat 6?*

No, a working copy is generally submitted in addition to a number of amendments (generally four or more) adopted after the last restated plan. The determination should include the adoption date for each of these amendments only. The working copy is considered a proposed amendment only if it includes an amendment that has not been previously adopted by the sponsor.

*7. If the applicant submits a proposed amendment and then submits another proposed amendment to correct a deficiency in the original proposed amendment, should both proposed amendments be included on the determination letter?*

No, the original proposed amendment should be marked superceded and placed with the purged material, the correct amendment should be included as caveat 6 on the determination letter.

*8. What caveats are required if the application includes an initial adoption document and an amendment signed on the same day?*

Caveat 28 and 26 are required to be used to indicate the initial adoption and the amendment to the plan.

*9. Exactly what merger documents should be included on the determination letter? What if an application is submitted for a profit sharing plan where there has been a merger of a money purchase plan with a profit sharing plan and includes the executed amendments for both plans for GUST?*

The Screening / Determination Alert dated June 12, 2003 states the "The following caveat should be used if a money purchase pension plan is merged into the profit sharing plan and the money purchase pension plan does not have a favorable determination letter. Caveat 9001 - This determination letter is also applicable for the amendment(s) made to the money purchase pension plan executed on \_\_\_\_\_.

For all other applications involving mergers, only the amendments for the surviving plan should be included on the determination letter. QAB 2003-2 provides guidance on Processing Determination Letter Applications Involving Plan Mergers and states "A favorable determination letter for the surviving plan may be relied upon with respect to whether the merged plans were timely and correctly amended for new tax law."